



CALFED
BAY-DELTA
PROGRAM

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January 4, 1999

The Honorable Maurice Johannessen
Chair, Senate Select Committee on CALFED Water Program
State Capitol, Room 5061
Sacramento, CA 95814

Dear Senator Johannessen:

Thank you for providing us with a copy of the *Chairman's Interim Report of the Senate Select Committee on the CALFED Water Program*. Although the *Chairman's Interim Report* contains recommendations throughout the text, the following material responds specifically to the "Chairman's Recommendations," Section VIII of the Report, in the order of the recommendations.

Additionally, under separate cover, we have provided you and every member of the Legislature a copy of the *CALFED Revised Phase II Report*, released on December 18, 1998.

Recommendation A-1, regarding Department of Water Resources' Bulletin 160-98.

The Department of Water Resources is statutorily responsible for this document (Water Code §10004), and adjustments to the methodology used in preparation of that Bulletin are within DWR's purview. The projection of water supply and demand in Bulletin 160, like any projection, is based on a set of assumptions about future behavior. Different groups have different assumptions about future behavior regarding water conservation and water recycling. The CALFED draft programmatic EIS/EIR acknowledged that estimates of water conservation differ between Bulletin 160 and the draft EIS/EIR, and it explained that this difference stems from the different purposes of the two documents (*Water Use Efficiency Component Technical Appendix*, page 1-5). Even so, CALFED is meeting with stakeholder groups regarding the assumptions and analytic approach being used in developing the Bay-Delta Program, with specific attention given to implications of various levels of demand projection on CALFED's overall water management strategy. Additionally, we have attempted to develop a strategy that is not dependent on projections, but rather responds to current problems and provides flexibility for responding to various future conditions.

CALFED Agencies

California

The Resources Agency
Department of Fish and Game
Department of Water Resources
California Environmental Protection Agency
State Water Resources Control Board

Federal

Environmental Protection Agency
Department of the Interior
Fish and Wildlife Service
Bureau of Reclamation
U.S. Army Corps of Engineers

Department of Agriculture
Natural Resources Conservation Service
Department of Commerce
National Marine Fisheries Service

Recommendation A-2, regarding the economic analysis in the draft programmatic EIS/EIR.

The draft programmatic EIS/EIR is intended to indicate the possible range of impacts on a regional or statewide basis. The draft EIS/EIR meets that intent and indicates that significant economic impacts, both positive and negative, will accompany implementation of the Program. For example, the draft EIS/EIR indicates a range of \$50 million to \$135 million per year in losses in gross farm revenues from conversion of agricultural land to habitat in the Delta; on the other hand, the draft EIS/EIR indicates a range of \$14 million to \$36 million per year in increases in business revenues for in-Delta recreation and fisheries from the Program's water quality element. All estimates can be refined, of course, and we are re-examining our analysis to ensure that it accurately and thoroughly reflects all economic impacts that can be reasonably expected. Detailed, site-specific analyses will be necessary to begin implementation.

Recommendation A-3, regarding data from a task force on wildlife refuge water supply.

The task force report, *An Interagency Coordinated Program for Wetland Water Use Planning, Central Valley, California -- Final Task Force Report*, addresses several topics regarding management of wildlife refuge water supplies. We are examining the final report from the Task Force to determine how the information in that report is best integrated into the Program. We should point out, however, that projecting water supply needs for wetlands -- like projecting water demand for cities -- is fraught with assumptions and details. Calculations of water demand, and changes in water demand based on changes in land use, are usually complicated activities. For example, water management of wetlands on wildlife refuges often includes drawdown of applied water as a plant cultural practice. Additionally, high water demands do not necessarily represent the net water use of wetlands, but rather, may include water circulation or flushing to avoid water temperature conditions that can lead to outbreaks of avian botulism. Some habitat restoration projects may result in no change in consumptive use of water, while others could require additional supplies. The current Program structure addresses the need for environmental water through re-operation, supply development options, and transfers.

Recommendation A-4, regarding State Water Resources Control Board investigations of waste and unreasonable use of water.

Water conservation is already part of California's overall water management approach. For example, the Urban Water Management Planning Act (Water Code §§10610-10656) requires submission of urban water management plans that, in part, demonstrate

how local urban water agencies propose to implement water conservation measures. Legislatively-mandated state policy is that urban water agencies be required to complete these plans to actively pursue the efficient use of available supplies [Water Code §10610.4 (c)]. This emphasis on water conservation is reflected in comments offered during public hearings on the draft programmatic EIS/EIR. In virtually every public hearing, comment was offered indicating that a wide spectrum of California residents endorses expansion of water conservation measures. As you know, the CALFED Bay-Delta Program proposes significant efforts to increase implementation of cost-effective water conservation in California. Because water conservation is already part of water management in California, a question arises on how to assure that these increases in water conservation will be implemented. One suggested approach for achieving these assurances is for the State Water Resources Control Board to exercise its existing authority under Water Code §275 to take all appropriate actions to prevent waste and unreasonable use of water.

Recommendation A-5, regarding storage as a common element of the Bay-Delta Program.

Based on our analysis to date, we have concluded that the Bay-Delta Program should contain provisions for construction of appropriate storage. It should be kept in mind, though, that the CALFED Bay-Delta Program, once adopted, will be an integrated set of actions to address four inter-related resources issues. The adopted Program will not have "variable" and "common" elements.

Recommendation A-6, regarding "safe harbor" regulations.

CALFED is working with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Game to develop a process for providing regulatory protection to owners of property adjacent to sites of proposed actions during the first stage of implementation of the Bay-Delta Program. It is CALFED's intention that property owners adjacent to CALFED ecosystem restoration sites not be subject to additional regulatory restrictions resulting from CALFED's restoration actions. For example, CALFED intends that normal, ongoing agricultural activities on lands adjacent to restoration sites would not be restricted because of impacts to listed species if such species occur because of CALFED's restoration activity. This approach is sometimes referred to as a "neighboring landowner" policy. This policy differs from a related policy, sometimes called a "safe harbors" policy. In a "safe harbors" policy, regulatory certainty may apply in limited cases to landowners choosing to engage in long-term habitat improvements on their own land. "Safe Harbors" is currently a draft federal policy.

Recommendation A-7, regarding maps of the location of property acquired by CALFED.

We agree that maps depicting the location of state and federal lands, classified by habitat, and depicting the location of property acquired for ecosystem restoration through the CALFED process will go a long way toward public understanding of the scope and nature of ecosystem restoration program. We are working on creation of these maps. CALFED's approach regarding geographic information systems is to use and build on existing GIS databases of government lands, restoration projects, habitats, important farmland, and natural resources. This approach leverages existing work and data, and it uses the expertise and knowledge of those who have developed much of the original data for a particular program or project. For example, UC Davis' Information Center for the Environment (ICE) has compiled an extensive list of restoration projects known as the Natural Resources Projects Inventory (NRPI). We have asked ICE to digitize the locations of Category III projects, help CALFED produce maps showing project locations, and add these projects to the larger database. In the near future, CALFED will be asking the USFWS and USBR to help us map CVPIA-funded restoration projects and add these to the NRPI database. In another example, the Department of Water Resources and the Sacramento River Advisory Council have assembled extensive, detailed geographic information for the Sacramento River, to help planners, scientists, and laypeople alike understand the land use and vegetation patterns, and flood, erosion, and channel dynamics of the river. Ultimately, this information may be used to help reestablish a continuous riparian ecosystem along the Sacramento River from Keswick to Verona. CALFED will rely, to a significant degree, on these ongoing cooperative efforts to help guide Ecosystem Restoration Program measures on the mainstem Sacramento River. CALFED has begun to acquire geographic information from CALFED agencies and UC Davis, and to assemble maps of infrastructure and existing state and federal lands. As mentioned above, the CALFED Program, with the assistance of UC Davis and several CALFED agencies, has started to digitize the general locations of Category III restoration projects. We also hope to have the general locations--we are using the term "general locations" because, in many instances, the exact boundaries of lands proposed for restoration or acquisition are not known yet--of CALFED Stage 1 actions digitized in the next several months to help with project planning and environmental impact analysis. We expect that the enhancement of existing databases and development of new CALFED Program geographical databases will improve our ability to (1) conduct local community and government outreach and local implementation planning, (2) assess project environmental impacts, (3) minimize and (where possible) avoid adverse environmental impacts, and (4) track the progress of CALFED Programs and other related programs. We also will use geographical information to refine Program activities and projects over time as part of the overall

CALFED adaptive management strategy. Finally, we expect the CALFED GIS program to be an integral part of the long-term CALFED Monitoring and Research Program. Two items of clarification may be in order at this point. First, CALFED has not acquired property. Property has been acquired by participating agencies under their existing authorities or by recipients of funds administered through CALFED. Second, land use change is not a Program goal, but instead, is a mechanism for achieving Bay-Delta Program goals. One of those goals is restoration of ecosystem functions. Identification of specific locations for additional habitat creation will depend on a variety of factors, including responsiveness of the ecosystem to past restoration activities.

Recommendation A-8, regarding cumulative analysis of state and federal plans.

The March 1998 draft programmatic EIS/EIR presented a cumulative, qualitative analyses for the CALFED Program combined with 14 non-CALFED projects that will have a reasonably foreseeable effect on the Central Valley environment and economy. We are now expanding that review to include other state and federal programs. To the extent that these activities and programs establish habitat that is also proposed in the ecosystem restoration program, that habitat reduces the amount of habitat needed to achieve ecosystem restoration program goals. Every effort will be made to fully integrate actions being taken by various state, federal, and local agencies with the CALFED Program.

Recommendation A-9, regarding CALFED's organizational structure.

CALFED is an interagency effort involving state and federal agencies that have committed to promoting maximum coordination, communication, and cooperation among themselves. These agencies have recognized that each has specific statutory and regulatory authority and responsibilities, and their cooperative agreement is not intended to constrain or limit the agencies in carrying out those authorities and responsibilities. As we get closer to adoption of a Program, some interested parties have expressed concern that existing government agency structures may inhibit close coordination, and they have suggested the creation of a new government organization to take on that coordination role. These interested parties are now working on a more precise definition of what roles will need to be filled, once Program implementation begins, and how best to organize government agencies to carry out those functions. CALFED agencies have not yet determined what organizational changes, if any, would be appropriate to ensure the close coordination needed for successful Program implementation.

Recommendation A-10, regarding environmental analyses in programmatic EIS/EIRs.

The California Environmental Quality Act generally requires public agencies to prepare environmental impact reports (EIR's) for projects that may have a significant effect on the environment. CEQA authorizes lead agencies to prepare a "program EIR" on a series of actions that are related either geographically or as logical parts in the chain of contemplated actions, as when the project proceeds in phases. (CEQA Guidelines, §15168(a); 15165.) Programmatic EIR's provide decision makers with a more exhaustive consideration of effects and alternatives than would be practical in an EIR on one of the individual actions. Programmatic EIR's also provide greater consideration of cumulative impacts that might be less fully described in a case-by-case analysis. In addition, a programmatic report allows the lead agency to consider broad policy alternatives and program-wide mitigation measures at a time when the agency has greater flexibility to address the cumulative impacts. At the same time, state regulations and case law establish that the level of specificity in an EIR's description of impacts and mitigation measures generally depends on the level of specificity involved in the underlying activities described in the EIR. (CEQA Guidelines, §15146; Rio Vista Farm Bureau Ctr. v. County of Solano (1992) 5 Cal.App.4th 351.) This congruence of specificity between descriptions of program actions and descriptions of impacts and mitigation measures is particularly relevant in situations, as with the CALFED Bay-Delta Program, where the lead agency is committed to further environmental review and analysis, once the project-specific information about the next stage of the program is known.

The National Environmental Policy Act (NEPA) authorizes similar programmatic environmental analyses and encourages agencies to coordinate environmental studies (NEPA Guidelines §§1506.2, 1508.28).

Recommendation B-1, regarding an extension in the term of the Select Committee.

The internal organization of the Legislature and its committees is properly the province of the Legislature itself, and we have no observations on this matter.

Recommendation B-2, regarding responses to legislative inquiries.

CALFED has given highest priority to responding to legislative inquiries and will continue to do so. The Report itself discusses five written requests from the Select Committee. CALFED provided three responses on July 30, 1998. These responses addressed requests of June 30 (a four-part request for detailed information on ecosystem

restoration projects), July 1 (for information on CALFED internal structure and use of consultants), and July 21 (for additional information on ecosystem restoration projects). CALFED provided a fourth response on September 1. This response addressed a request of July 20 for information on development of acreage estimates found in the programmatic environmental impact statement/environmental impact report. CALFED provided the fifth response on September 25. This response addressed a request of September 1 for information on use of DWR's Bulletin 160 in development of the CALFED Bay-Delta Program. Each CALFED response provided information as detailed as possible, given the development of the Program as of the date of the response.

Recommendation B-3, regarding legislation to require all land acquisitions for wildlife conservation purposes to comply with the California Environmental Quality Act.

Public Resources Code §21084 directs The Resources Agency to include in the CEQA Guidelines a list of classes of projects which have been determined not to have a significant effect on the environment and which shall be exempt from CEQA. In the CEQA Guidelines (Title 14, California Code of Regulations, Section 15313), The Resources Agency has followed that statutory directive by exempting, as a class of project, those projects that are acquisitions of lands for wildlife conservation purposes. Presumably the Chair's legislation would clarify legislative intent on whether this class of projects should be exempt from the requirements of CEQA. CALFED agencies will, of course, comply with all laws that apply to their activities.

Recommendation C-1, regarding requests for audits of the CALFED Program.

Proper fiscal accounting is an important aspect of any government program. We are confident that CALFED agencies have followed proper fiscal tracking and accounting procedures from inception of the Program. Even so, it is appropriate that an interagency program such as CALFED should be subject to thorough review on both the state and federal levels.

Recommendation C-2, regarding reports to the Legislature on Program expenditures.

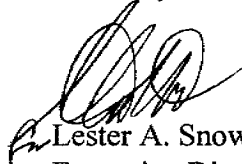
CALFED agencies have provided, and will continue to provide, reports to the Legislature and Congress on Program expenditures. For example, on January 8, 1998, the Secretary for Resources provided Proposition 204 expenditure reports to the Legislature in response to the *Supplemental Report of the 1997 Budget Act*. On April 20, 1998, those reports were updated in material forwarded to the Assembly

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Committee on Budget Subcommittee on Resources. This material responded to inquiries brought forward during the Legislature's development of the fiscal year 1998-99 budget bill. Additional updated reports will be forwarded in response to the *Supplemental Report of the 1998 Budget Act*. Moreover, the U.S. Bureau of Reclamation forwards quarterly reports to Congress on expenditures of federal funds authorized under the California Bay-Delta Environmental Enhancement and Water Security Act.

Thank you for the opportunity to comment on the *Chairman's Interim Report*. I hope the Legislature finds this information to be helpful in its review of the CALFED Bay-Delta Program. If you have further questions on this material, please call me at (916) 657-2666 or Daniel McCarroll, CALFED Legislative Coordinator, at (916) 653-5704.

Sincerely,



Lester A. Snow
Executive Director

cc: Senator Jim Costa
Senator Dede Alpert
Senator David Kelley
Senator Richard Rainey
Senator Hilda Solis